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FEDERAL COMMUNICATIONS COMMISSION

Building The Wireless Future™

CTIA
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March 1, 1995

[redacted]

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: ***Ex Parte* Presentation**
PR Docket Nos. 94-103, 94-104, 94-106,
94-107, [redacted], 94-109 and 94-110

Dear Mr. Caton:

On Wednesday, March 1, 1995, the Cellular Telecommunications Industry Association ("CTIA") represented by the attached list of individuals met with Commissioner Rachelle Chong and her Special Advisor, Ms. Jill Luckett, to discuss issues concerning the state petitions to continue regulatory authority over CMRS rates.

At the meeting, CTIA presented the attached document. Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachments are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Andrea D. Williams

Andrea D. Williams
Staff Counsel

Attachments (2)

No. of Copies rec'd 0+1
List ABCDE

FCC Meetings on State Preemption
March 1, 1995
Washington, D.C.

Meeting with Commissioner Rachelle Chong
2:30-3:00 p.m.

PARTICIPANTS

Mr. Alfred Boschulte
President
TOMCOM, L.P.

Mr. Randall Coleman
Vice President, Regulatory Policy
& Law
CTIA

Mr. Brian Fontes
Senior Vice President, Policy &
Administration
CTIA

Ms. Catherine Massey
Senior Regulatory Counsel
McCaw Cellular Communications,
Inc.

Ms. Susan Smith
Director of External Relations
Century Cellunet, Inc.

Mr. Mark Tuller
Vice President, General Counsel,
and Secretary
Bell Atlantic Mobile Systems, Inc.

Ms. Eva Wohn
Director of Regulatory Affairs
United States Cellular Corporation

CTIA **_Building The Wireless Future_**

PROMOTING WIRELESS COMPETITION IN ALL 50 STATES

Cellular Telecommunications Industry Association (CTIA)
***Ex Parte* Presentation Concerning**
PR Docket Nos. 94-103, 94-104 and 94-106 through 94-110
March 1, 1995

<u>Today's Presentation</u>

• Introduction and Overview	Brian Fontes (CTIA)
• Specific State Petitions:	
Arizona	Susan Smith (Century Cellular)
Connecticut	Mark Tuller (Bell Atlantic Mobile)
Hawaii	Eva-Maria Wohn (U.S. Cellular)
Louisiana	Susan Smith (Century Cellular)
New York	Alfred Boschulte (TOMCOM, L.P.) Eva-Maria Wohn (U.S. Cellular)
Ohio	Eva-Maria Wohn (U.S. Cellular)
• Conclusion	Brian Fontes (CTIA)

The Statutory Standard

Congress preempted state regulation of entry and rates for Commercial Mobile Radio Services (CMRS) in order to:

> "[F]oster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[1]

States may regulate rates only if they can demonstrate to the FCC that:

- market conditions fail to protect subscribers adequately from unjust and unreasonable prices or rates that are unjustly or unreasonably discriminatory; or
- that the market conditions, as defined above, exist and CMRS services are a replacement for landline telephone exchange service for a substantial portion of telephone landline exchange service within such state.[2]

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1 H.R. REP. NO. 111, 103d Cong., 1st Sess. 259-61 (1993).

2 See 47 U.S.C. § 332(c)(3)(A)(i) and (ii) (1993).

The Statutory Standard (Continued)

Congress' legislative history provides that:

- The Commission must "be mindful of the desire to give the policies embodied in Section 332(c) an adequate opportunity to yield the benefits of increased competition and subscriber choice."[3]

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[3] H.R. REP. NO. 111, 103d Cong., 1st Sess. 261 (1993).

Today We Will Demonstrate:

- The States Have Failed to Meet Statutory Standard to Regulate

and

- State Regulation Thwarts Competition and Harms Consumers

The States Have Failed to Provide
the Requisite "Demonstrative" Evidence

Arizona

- Test #1: The ACC petition does not show market conditions fail to protect subscribers.

  The ACC fails to provide "evidence, information, and analysis" pertinent to examining "market conditions and consumer protection."[4] Instead, the ACC makes numerous misstatements of fact as to the extent of competition, and expresses its "belief" that the market falls short of "effective" competition because:
  (1) cellular is a duopoly;
  (2) one of the carriers is also the LEC; and
  (3) most cellular carriers have close relationships with a particular reseller.

- Test #2: The ACC petition does not show that commercial mobile radio services are a replacement for landline telephone exchange service for a substantial portion of telephone landline exchange service in Arizona.

  The ACC's speculation that CMRS is "becoming" a replacement for landline telephone exchange service fails to meet the statutory requirement for demonstration of current replacement of a "substantial" portion of telephone landline exchange service.

- Congress has not empowered the Commission to consider any regulation of market entry by the states, and the authorization sought by the ACC to continue regulation of entry is therefore prohibited.

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[4] *CMRS Second Report and Order*, 9 FCC Rcd. at 1504-05.

The States Have Failed to Provide
the Requisite "Demonstrative" Evidence

Connecticut

- Test #1: The Connecticut DPUC fails to show market conditions fail to protect subscribers.

  The DPUC instead states that a duopoly market is not "truly competitive," despite its 1991 finding that the wholesale cellular market is sufficiently competitive to forbear from further rate regulation.[5]

  Nevertheless, the DPUC concedes that the evidence regarding basic rates is "inconclusive."

- Test #2: The DPUC does not show that commercial mobile radio services are a replacement for landline telephone exchange service for a substantial portion of telephone landline exchange service in Connecticut.

- The DPUC wrongly tries to shift the burden of proof to the carriers.

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5 Application of Springwich Cellular Ltd. Partnership for a Declaratory Ruling Re: Forbearance From Regulation of Rates of Cellular Telephone Mobile Telephone Service, No. 90-09-03, Slip op. Sept. 25, 1991.

The States Have Failed to Provide
<u>the Requisite "Demonstrative" Evidence</u>

Hawaii

- Test #1: The Hawaii PUC fails to show market conditions fail to protect subscribers:

  The HPUC instead states its belief in the necessity of regulating CMRS rates and tariffs to ensure "true competition," acknowledging current data does not demonstrate the insufficiency of market conditions.

  The HPUC concedes it is uncertain whether CMRS rates are unjust or unreasonable.

  Record data demonstrates decreasing cellular rates and the absence of subscriber/consumer complaints.

- Test #2: The HPUC does not show that commercial mobile radio services are a replacement for landline telephone exchange service for a substantial portion of telephone landline exchange service in Hawaii.

  HPUC has not submitted complete market information and has given no consideration to SMR providers or to prospective PCS providers.

The States Have Failed to Provide
the Requisite "Demonstrative" Evidence

Louisiana

- Test #1: The Louisiana PSC petition does not show market conditions fail to protect subscribers.

  (1) The LPSC admits it is uncertain whether current rates are unjust or unreasonable;
  (2) Record data shows Louisiana cellular subscribership has grown, carriers have increased investment, and prices have declined -- evidence of a competitive market; and
  (3) LPSC presents no evidence that regulation benefits consumers, and it ignores the fact that its regulations raise costs to consumers and impedes competition. The Rozek Affidavit demonstrates Louisiana's regulations raise prices by $8.63 per month for a typical bill in Louisiana.

- Test #2: The LPSC does not show that commercial mobile radio services are a replacement for landline telephone exchange service for a substantial portion of telephone landline exchange service in Louisiana.

- Congress has not empowered the Commission to consider any regulation of market <u>entry</u> by the states, and the authorization sought by the LPSC to continue regulation of entry is therefore prohibited.

The LPSC seeks to grandfather rate regulations not in effect on June 1, 1993.

The States Have Failed to Provide
the Requisite "Demonstrative" Evidence

New York

- Test #1: The New York PSC petition does not show market conditions fail to protect subscribers.

  Instead, the PSC suggests that cellular rates are higher than local exchange service rates.

- Test #2: The PSC does not show that commercial mobile radio services are a replacement for landline telephone exchange service for a substantial portion of telephone landline exchange service in New York.

  The PSC merely suggests that increased use of cellular indicates that it is becoming an essential service for many segments of society.

- Contrary to New York's assertions:

  (1) Market share is not an indicator of competition in the marketplace; and
  (2) State rate regulation is not necessary because cellular carriers remain subject to the obligations imposed upon all common carriers pursuant to Sections 201 and 202 of the Communications Act.

The States Have Failed to Provide
the Requisite "Demonstrative" Evidence

Ohio

- Test #1: The PUCO fails to show market conditions fail to protect subscribers.

  The PUCO does not provide any analysis or evidence based upon the Commission's eight guidelines or any other guidelines for demonstrating market conditions.

  The PUCO petition is contrary to its recent finding that "the cellular market now warrants a further relaxation of regulatory oversight," and that "[t]he future deployment of PCS may very well provide an equivalent substitute or competition to cellular."[6]

- Test #2: The PUCO does not show that commercial mobile radio services are a replacement for landline telephone exchange service for a substantial portion of telephone landline exchange service in Ohio.

- The petition is premature, seeking to assert jurisdiction over rate and market entry at an unspecified date in the future based upon undeveloped facts and circumstances. In addition, state regulation of market entry is prohibited by statute.

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[6] *In the Matter of the Commission Investigation into Implementation of Section 4927.01 Through 4927.05, Revised Code, as They Relate to Competitive Telecommunications Services*, PUCO Case No. 89-563-TP-COI, *Finding and Order*, Entered October 22, 1993, at 20-31 and fn 1.

The States Have Failed to Provide
the Requisite "Demonstrative" Evidence

Wyoming

- Test #1: The Wyoming PSC does not show market conditions fail to protect consumers.
- Test #2: The PSC does not show that commercial mobile radio services are a replacement for landline telephone exchange service for a substantial portion of telephone landline exchange service in Wyoming.
- Congress has not empowered the Commission to consider any regulation of market entry by the states, and the authorization sought by the Wyoming PSC to continue regulation of entry is therefore prohibited.
- The PSC does not conclude, nor can it be concluded from the information provided, that state regulation is of any benefit to subscribers.

Conclusion

The FCC does not need to preempt state regulations -- Congress has already preempted state rate regulation. By this action, Congress sought to create a uniform, nationwide and streamlined federal regulatory regime for CMRS.

Congress has provided the FCC with authority to allow states to continue rate regulation only if the states meet the statutory standard.

- No state has met its burden under the proper statutory standard.
- No state has demonstrated a market failure for CMRS or that regulation provides consumers with benefits superior to those of competition
- Allowing states to continue rate regulation which imposes burdensome costs, harms competition, and causes rates to remain higher than competitive levels defeats the national policy of a uniform, ubiquitous, and streamlined federal regulatory structure which Congress envisioned for commercial mobile radio services.

All state petitions should be denied.